IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Roger HANSEN et al.	§	Confirmation No.:	5369
		§		
Serial No.:	10/737,374	§	Group Art Unit:	2114
		§		
Filed:	December 16, 2003	§	Examiner:	Loan Truong
		§		
For:	Persistent Memory Device	§	Docket No.:	200312027-1
	For Backup Process	§		
	Checkpoint States	§		

REPLY BRIEF

Mail Stop Appeal Brief – Patents   Date: April 21, 2011
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated March 1, 2011, Appellants submit this Reply Brief for further consideration by the Board.

I.   **RESPONSE TO ARGUMENTS**

A.   **Layer Upon Layer Of Inherency**

The rejection presented has two levels or layers of inherency. The first level is the presence of a network interface in Vis. Vis is silent as to the presence of a network interface with respect to the backup store 150, and thus the rejection must rely on an allegedly inherent network interface. The second level of inherency is the path through which checkpoint information is written. Figure 1 of Vis expressly shows the backup store 150 coupled to the nodes 170 by a different route than the connections to the load balancer 110 and network 170. Thus, the rejection must rely on an allegedly inherent path for the checkpoint commands, the path through the load balancer 110 and network 170.

It follows that to arrive at the alleged obviousness the Answer relies on allegedly inherent network interfaces, and the allegedly inherent network interfaces inherently communicating through the load balancer 110 and

network 170. Appellants respectfully submit there are simply too many layers of inherency for the rejection to stand.

B. File Level Operations Do Not Imply DMA

Next, the Answer takes issue with Kano, indicating that:

> The claim language does not exclude file-level operations or include initializing DMA but simply states "a remote direct memory write command is preceded by a create request and the read command is preceded by an open request."[1]

The logic, as best understood, is that Traverstat teaches DMA, and Kano teaches a file opening and creating process, and from those two diverse teachings the claim limitations "a remote direct memory write command is preceded by a create request and the read command is preceded by an open request" are met; however, separating the expressly recited "remote direct memory write" from the create request such that they are unrelated is wholly inconsistent with the specification. "The protocol of giving claims their broadest reasonable interpretation during examination does not including giving claims a legally incorrect interpretation. This protocol is solely an examination expedient, not a rule of claim construction."[2]

C. What Traverstat Would Allow, And What Is Necessarily Present, Are Not The Same

With respect to what Traverstat allegedly adds, the Answer indicates "As defined by wikipedia.org …, the network interface controller may implements [sic] DMA data transfer technique… . The combination of Viswanathan et al. in further view of Traverstat et al. would allow for network interface implementing DMA capabilities."[3] Appellants respectfully traverse.

Putting aside for the moment the Answer is now attempting to formulate the rejection using a Wikipedia reference not of record[4], what Traverstat "would allow for" is immaterial.

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[1] Answer Page 14, Number section "iii."
[2] *In re Robert Skvorecz*, 580 F.3d 1262 (Fed. Cir. 2009).
[3] Answer Page 15, paragraph spanning pages 14 and 15.
[4] Answer Page 3, Numbered paragraph 8 – "Evidence Relied Upon."

> To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be recognized by persons of ordinary skill. **Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.**[5]

Even if hypothetically correct to rely upon the Wikipedia article (which Appellants do not admit), the Wikipedia article, Vis, and Traverstat fail to make clear that it is necessarily present in Traverstat that the heap translation is performed by the network interface. Appellants respectfully submit the rejection must fail.

D.   The Wikipedia Article Is Not Proper Evidence Of Obviousness

Moreover, the Answer fails to present any evidence that the Wikipedia article is prior art under Section 102, or represents the state of knowledge at the time the application was filed. The current application was filed December 16, 2003. Wikipedia articles are a constantly changing and evolving set of knowledge, and the noted article does NOT necessarily reflect the state of knowledge as of the filing date of the application. Thus, Appellants respectfully submit that the attempt to fill the deficiencies of Vis and Traverstat with a Wikipedia article is error.

II.   CONCLUSIONS

For the reasons stated above as well as in Appellants' principle brief, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net

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[5] MPEP 8th Ed., Rev. 6, September 2007, § 2112(IV), p. 2100-47 (internal quotations omitted, emphasis added).

addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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Mark E. Scott
PTO Reg. No. 43,100
CONLEY ROSE, P.C.
(512) 610-3410 (Phone)
(512) 610-3456 (Fax)
ATTORNEY FOR APPELLANTS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
3404 E. Harmony Road
Fort Collins, CO 80528